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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,775	02/20/2004	Franz Maser	HERR 20.986	6673
26304 7590 05/18/2007 KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585			EXAMINER DANIELS, MATTHEW J	
			ART UNIT 1732	PAPER NUMBER
			MAIL DATE 05/18/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/783,775

Applicant(s)

MASER ET AL.

Examiner

Matthew J. Daniels

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 and 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 3/30/07.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 1-11 and 18-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 16 March 2007.

### *Information Disclosure Statement*

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### *International Search Report*

3. WO 95/04102 and DE 19854769 were cited by the PCT/IB 01/01911 search report as documents considered to be of particular relevance. WO 95/04102 is cited below in rejections under 35 USC 103(a). DE 19854769 is considered to be a less pertinent reference because it teaches polyamide-based film tubes instead of the claimed collagen.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 12 and 14-16** are rejected under 35 U.S.C. 103(a) as obvious over Devro (WO 95/04102, of record) in view of Sinibaldo (USPN 3779285). **As to Claim 12**, Devro teaches a method of perforating a flat film based on collagen using a laser (page 4) having “circular” holes (page 4, line 9), which would meet the claimed ellipticity of Claim 1 (a circle would have an ellipticity of zero). Devro is silent to a process which results in a film having the spacing of holes claimed in Claim 1. However, the particular spacing would have been prima facie obvious over Sinibaldo who teaches when forming holes in food casings, the formed perforations should be spaced apart from each other in a configuration at a distance of at least about 50 times greater than the diameter of the formed perforations (4:16-31). Devro’s hole size of 0.1 mm to 0.9 mm (page 4, lines 10-20) taken in view of Sinibaldo’s teachings would have suggested a hole spacing of about 5 mm to about 45 mm ( $0.1 \times 50 = 5$ ,  $0.9 \times 50 = 45$ ). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Sinibaldo into that of Devro in order to space the perforations of Devro far enough apart to avoid degrading the mechanical strength of the film.

**As to Claim 14**, Devro teaches a method of perforating a flat film based on collagen using a laser (page 4) having “circular” holes (page 4, line 9), which would meet the claimed ellipticity (a circle would have an ellipticity of zero). The apparatus would have been inherently

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adjusted to provide this limitation to the film. **As to Claim 15**, Devro teaches a method of perforating a flat film based on collagen using a laser (page 4) having “circular” holes (page 4, line 9) and diameters of 100 microns to 900 microns, preferably 200 microns to 500 microns (page 4, lines 10-20). The apparatus would have been inherently adjusted to provide this limitation to the film. **As to Claim 16**, Devro suggests a random pattern (page 4, lines 23-26), which would be irregular.

5. **Claim 13** is rejected under 35 U.S.C. 103(a) as obvious over Devro (WO 95/04102) in view of Sinibaldo (USPN 3779285) and Andriash (USPN 5550346). **As to Claim 13**, Devro teaches a method of perforating a flat film based on collagen using a laser (page 4) having “circular” holes (page 4, line 9), which would meet the claimed ellipticity of Claim 1 (a circle would have an ellipticity of zero). Devro is silent to (a) a process which results in a film having the spacing of holes claimed in Claim 1, and (b) the claimed carbon dioxide laser. However, these aspects of the invention would have been prima facie obvious for the following reasons:
- a) The particular spacing would have been prima facie obvious over Sinibaldo who teaches when forming holes in food casings, the formed perforations should be spaced apart from each other in a configuration at a distance of at least about 50 times greater than the diameter of the formed perforations (4:16-31). Devro’s hole size of 0.1 mm to 0.9 mm (page 4, lines 10-20) taken in view of Sinibaldo’s teachings would have suggested a hole spacing of about 5 mm to about 45 mm ( $0.1 \times 50 = 5$ ,  $0.9 \times 50 = 45$ ).
  - b) Use of carbon dioxide lasers to perforate sheet materials is conventional and is taught by Andriash (3:26, 1:59-67)

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the methods of Sinibaldo and Andriash into that of Devro (a) in order to space the perforations of Devro far enough apart to avoid degrading the mechanical strength of the film, and (b) because Devro clearly suggests a laser to perforate the sheet (page 4, line 4) and Andriash teaches that carbon dioxide lasers are capable of perforating sheets.

6. **Claim 17** is rejected under 35 U.S.C. 103(a) as obvious over Devro (WO 95/04102) in view of Sinibaldo (USPN 3779285), and further in view of Andriash (USPN 5550346). Devro and Sinibaldo teach the subject matter of Claim 12 above under 35 USC 103(a). **As to Claim 17**, Devro is silent to the perforating in a continuous way. However, it is generally prima facie obvious to make a batch process continuous. *In re Dilnot*, 319 F.2d 188, 138 USPQ 248 (CCPA 1963) (Claim directed to a method of producing a cementitious structure wherein a stable air foam is introduced into a slurry of cementitious material differed from the prior art only in requiring the addition of the foam to be continuous. The court held the claimed continuous operation would have been obvious in light of the batch process of the prior art.). In the alternative, Andriash teaches a process for perforating films (Fig. 1) that is continuous (See arrow on item 38 in Fig. 1 and the rollers, items 46 and 44).

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method Andriash into that of Devro because Devro clearly suggests a laser to perforate the sheet (page 4, line 4) and Andriash teaches that carbon dioxide lasers are capable of perforating sheets, and the continuous process would be desirable as an efficient process for perforating sheets of material.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Daniels whose telephone number is (571) 272-2450. The examiner can normally be reached on Monday - Friday, 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Matthew J. Daniels', is positioned above the printed name.

Matthew J. Daniels

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16 May 2007